The fact that the appellant was prosecuted because of the complaint made to the Town Council by the respondent was quite immaterial and could not affect the right of the respondent to avail himself of the ground afforded to him under section 16(1)(k) of the Control of Rent Act in recovering possession of the demised premises. The facts in the case of *Cheam See Loo Brothers, supra*, were quite different from those in the present case before me. In that case the Town Council had received a complaint from the respondents alleging that the appellants had committed a breach of the building by-laws by erecting a corrugated iron roof over the kitchen area of the demised premises. The Town Council replied saying that the Council did not propose to take any action on the complaint with the result that the appellants were never prosecuted for the alleged breach of any building by-law. The Federal Court held following the decision in the case of *Hooi Chuk Kwong* v. *Lim Saw Choo*[2] that for a claim to succeed under section 16(1)(k) of the Control of Rent Act exposure to prosecution was not enough. There must be exposure to conviction and there could be no exposure to conviction unless facts existed which would support a conviction. In delivering the judgment of the court Ong C.J. said: —

"... In the instant case the Raub Town Council had decided in 1969 not to prosecute because they were of opinion that there was no breach of the building by-law. Such being the undisputed facts — and no prosecution having arisen during the three subsequent years — the respondents clearly could not in 1972 maintain that they were 'exposed' to any penalty, fine or forfeiture. The appellants therefore were protected tenants because paragraph (k) was not available to the landlords as a ground for recovering possession. Even had the Town Council acted wrongly in deciding not to prosecute, it was well within their powers so to act because section 18 of the Town Boards Enactment (Cap. 137) gave the Chairman an absolute discretion to compound offences and the Town Council cannot by mandamus be ordered to prosecute."

With regard to the submission that the record of the conviction against the appellant was inadmissible I agree that a conviction obtained against a person in criminal proceedings is inadmissible in evidence in civil proceedings but a plea of guilty being an admission is certainly admissible if it is relevant to the matter in issue as was the case in the present appeal. (See the case of *She Eng Gek* v. *D. A. De Silva*[3]).

On the point raised by Mr. D'Cruz that the respondent had to prove that the appellant had knowingly contravened the building by-laws I must say that there is nothing in the by-laws nor in section 16(1)(k) of the Control of Rent Act which made it necessary to prove that at the time when she put up the plywood partition the appellant knew that she was committing a breach of the building by-laws of the Town Council. All that was required to prove and which was amply proved in this case was that the appellant erected the partition on the ground floor of the premises, that the erection of the partition whether the appellant knew it or not constituted a breach of the building by-laws and that it exposed the appellant to a fine.

It now remains to be considered whether in making the order for the recovery of the premises in favour of the appellant the learned magistrate had exercised his discretion under section 16(1)(k) of the Control of Rent Act in a fair and just manner. As I have stated earlier the learned magistrate reserved his decision for about six weeks and it may be assumed that he did so in order to deliberate upon the evidence in the case and to give a considered judgment. The appellant had chosen not to call any evidence on her behalf and the magistrate could therefore only go by the evidence adduced by the respondent. In his grounds of judgment the learned magistrate said that there were no inherent improbabilities in the evidence of the respondent and he would therefore accept it. In the event he found for the respondent and ordered the appellant to vacate the premises within three months. In all the circumstances of this case I do not think that the learned magistrate acted unreasonably in ordering the appellant to give possession of the premises to the respondent. By remaining silent the appellant was not helping her own cause. As a result there were hardly any mitigating circumstances or other relevant considerations before the court which could have been taken in favour of the appellant.

The appeal is accordingly dismissed with costs.

Appeal dismissed.

Solicitors: *A. K. J. D'Cruz & Co.; Seah Choon Chye.*

PUBLIC PROSECUTOR v. SOON TIEW CHOON

[A.Cr.J. (Hashim Yeop A. Sani J.) September 19, 1975]
[Ipoh — Criminal Appeal No. 109 of 1974]

Criminal Law and Procedure — Charge of making a false statement — Plea of guilty — Contents of charge inconsistent with brief facts — Magistrate rejecting plea and acquitting accused — Evidence must be heard first before magistrate can acquit — Criminal Procedure Code (F.M.S. Cap. 6), s. 173(g).

The respondent in this case pleaded guilty to a charge of knowingly making a false statement in answer to a question in a form in respect of an application to have her son registered as a citizen, an offence punishable under section 16(1) of Part III of the Second Schedule to the Constitution. It was found that the question referred to in the brief facts seemed different from the question in the specified charge and the learned magistrate rejected the respondent's plea and acquitted her when the prosecution failed to clarify a number of points relating to the charge.

Held: it was not open to the magistrate to acquit without hearing the evidence and therefore the acquittal must be set aside and the prosecution be given liberty to re-summon the respondent or to reframe the charge as they think fit.

Case referred to:-

(1) *Public Prosecutor* v. *Mahmud* [1974] 1 M.L.J. 85.

CRIMINAL APPEAL.

Wan Abdul Majid bin Wan Hamid (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Hashim Yeop A. Sani J. (delivering oral judgment): The respondent was charged before the magistrate for knowingly making a false statement in an answer to a question in a form in respect of an application to have her son registered as a citizen, an offence punishable under section 16(1)(a) in Part III of the Second Schedule to the Constitution. The respondent pleaded guilty and the brief facts were given by the prosecuting officer.

In the brief facts it was stated that the respondent gave a negative reply to a question which asked whether she had made an application before. The prosecuting officer also stated that the son of the respondent was registered as a citizen on August 15, 1958 but which registration was cancelled or revoked. Beyond these nothing else was stated in the brief facts of the case.

According to the record of the magistrate the respondent is illiterate and the form was prepared on her behalf by somebody else.

It is elementary but nonetheless fundamental that when an accused pleads guilty to a charge the brief facts given by the prosecuting officer must reflect the true and essential elements in the charge.

In this case firstly, the question referred to in the brief facts seems to be different from the question specified in the charge, the answer to which is alleged to be false. Again, it is alleged in the charge that the citizenship of the son was subsequently "cancelled" although the word "diluchutkan" (meaning "deprived") is used in P2. It is not however stated anywhere under what provision of the Constitution the respondent's son was so deprived of his citizenship. Furthermore, if as the charge says, the certificate was cancelled under what provision was it cancelled? If the cancellation was purported to be made under Article 30 of the Constitution read with section 30 of the Interpretation and General Clauses Ordinance 1948 then it is a serious question of law to be decided whether the respondent's son was in fact ever a citizen. Therefore the answer "No" against the question specified in the charge would *prima facie* seem not to be necessarily legally incorrect.

Finally in this case the magistrate had also asked for clarification on a number of points relating to the charge which the prosecuting officer could not provide even after an adjournment. On this point I would urge all prosecuting officers to be conversant with the facts of their cases before these cases are brought to court so that they can assist the court in the disposal of these cases expeditiously with justice and without undue delay.

Apparently based on the unsatisfactory facts given by the prosecution the magistrate thereupon rejected the plea of the respondent and acquitted the respondent presumably purporting to act under section 173(g) of the Criminal Procedure Code (F.M.S. Cap. 6). In my view it is on this point that the appeal must succeed.

The facts leading to the rejection of the plea by the magistrate in this case are similar to those in *Public Prosecutor* v. *Mahmud*[1]. In that case without asking the respondent whether he admitted the brief facts the magistrate in his short grounds of judgment ruled that an offence under section 36(1) of the Road Traffic Ordinance, 1958 was not disclosed and thereupon acquitted the respondent. Similarly in the instant case the magistrate without asking the respondent whether she admitted the brief facts of the prosecution acquitted the respondent as he found that the facts did not disclose an offence.

In his judgment in *Public Prosecutor* v. *Mahmud, supra*, H. S. Ong, F.J. referred to the commentary by *Mallal* at page 270 of his Criminal Procedure (4th Edn.) on the Singapore section 172(g) which is in *pari materia* with section 183(g) of the Criminal Procedure Code (S.S. Cap. 21) and section 173(g) of the Criminal Procedure Code (F.M.S. Cap. 6). Ong, F.J. said at the end of his judgment "I am to add that without hearing evidence it is not open to the magistrate to acquit. There has been no trial and I therefore set aside the order of acquittal and direct that respondent be re-summoned to answer to the charge as framed."

Based on the foregoing the order of acquittal of the magistrate is hereby set aside and the prosecution be at liberty to re-summon the respondent or to reframe the charge as they may think fit.

Acquittal set aside.

CHIN MOI & ANOR. v. CHEW PEN HOCK

[O.C.J. (Syed Othman J.) September 26, 1975]
[Kuantan — Civil Suit No. 172 of 1973]

Family Law — Application for a declaration that first plaintiff is lawfully wedded wife and the second plaintiff is legitimate child of defendant for the purpose of applying for maintenance — Whether High Court has jurisdiction to make declaration — Proof of Chinese customary marriage — Ceremony — Married Women and Children (Maintenance) Ordinance, 1950, section 8 — Courts of Judicature Act, s. 24(a) — Specific Relief Act, s. 41.

The plaintiffs sought a declaration that the first plaintiff is the lawfully wedded wife of the defendant and that the second plaintiff is the legitimate child of the defendant for the purpose of applying for maintenance under the Married Women and Children (Maintenance) Ordinance, 1950.

Held: (1) the High Court has jurisdiction to determine the questions raised in the application and to make the declarations;

(2) on the facts there was a marriage ceremony in this case and therefore the court would make the declarations asked for.

Cases referred to:-

(1) *Then Kang Chu* v. *Tan Kim Hoe* (1926) S.S.L.R. 1.
(2) *De Gasquet James* v. *Mecklenburg Schwerin* (1914) P. 53 at p. 71.
(3) *Har-Shefi* v. *Har-Shefi* [1953] 1 All E.R. 783.
(4) *R.* v. *Ratnam* (1930) S.S.L.R. 218.
(5) *Choo Eng Choon* v. *Neo Chan Neo & Ors.* (1908) 12 S.S.L.R. 120.
(6) *Piers* v. *Piers* (1849) 2 H.L.C. 331; 9 E.R. 1118.
(7) *Morris* v. *Davies* (1837) 5 Ch. & Fin 163 at p. 265.
(8) *Mahadervan* v. *Mahadervan* [1962] 3 All E.R. 1108.

CIVIL SUIT.

S. Sivasubramaniam for the plaintiffs.

B. K. Ong for the defendant.

Syed Othman J.: In this action the plaintiffs seek a declaration that the first plaintiff is the lawful wedded wife of the defendant, and that the second plaintiff is the legitimate child of the defendant and the first plaintiff, for the purpose of applying for maintenance under the Married Women and Children (Maintenance) Ordinance, 1950.